SINGAPORE REPORTS

CHOO KOK HOE & ORS. v. CHOO KOK BENG
CHOO KOK ENG & ANOR. v. CHOO KOK BENG

[C.A. (Wee Chong Jin C.J., Sinnathuray & Chua JJ.) July 23, 1982]
[Singapore – Civil Appeal Nos. 113 of 1980 & 1 of 1981]

Land Law – Beneficial ownership of houses in dispute – Trial judge's findings on credibility of witnesses reversed.

The appeals in this case arose out of a dispute involving four brothers over the beneficial ownership of ten semi-detached dwelling houses at Jalan Jermin, Singapore. The four brothers were Choo Kok Eng, Choo Kok Leong, Choo Kok Hoe and Choo Kok Beng.

The facts revealed that the disputed land was purchased at an auction held in February 1954. Choo Kok Hoe (the first appellant in C.A. No. 113 of 1980) attended an auction at which he was the successful bidder for the disputed land. His successful bid was $17,792/-. At the auction, he paid using a cheque on his personal bank account, the deposit of 25% of the purchase price. In March 1954, he paid the balance of the purchase price, again using a cheque on his bank account, as well as the conveyancing and other expenses.

The disputed land (Lot 184-204 to 208) was conveyed and registered in the name of Choo Kok Beng (the respondent in both appeals).

Some time after its purchase the said land was let as vacant land at a rent of $150/- per month until 1964. Choo Kok Hoe received all rents paid and he paid the assessments on property tax payable in respect of the disputed land.

In 1963, Choo Kok Hoe instructed a firm of architects to seek planning approval for the amalgamation and subdivision and the erection of ten semi-detached dwelling houses on the said land. In May 1967 the said houses were completed at a total cost of $203,000/- which were paid by Choo Kok Hoe and Choo Kok Leong out of monies of a building construction firm of which they were the partners.

In 1968, a firm of solicitors were given the title deeds of the said land by Choo Kok Hoe and were instructed to apply for the issue of separate titles under the Land Titles Act in respect of ten subdivided Lots. In April 1969, the Registrar of Titles wrote to the solicitors stating that qualified titles could be issued provided a Statutory Declaration of long possession was sworn because a title deed being a conveyance registered in Volume 1107 No. 128, could not be produced for the Registrar's inspection as it was missing. Thereafter differences having arisen between Choo Kok Beng and his brothers, the application for separate titles remained in abeyance.

Choo Kok Beng claimed that he was the beneficial and legal owner for the land and houses built thereon. He claimed that Choo Kok Hoe purchased the disputed land at the auction on his behalf as his agent and that the purchase price was paid out of his own monies.

The trial judge allowed his claim and said that it "was a case which depended entirely on the credibility or otherwise of the witnesses testifying before (him)." The defendants appealed.

Held, allowing the appeals: (1) the trial judge gave no reasons why he found that Choo Kok Hoe acted on behalf of Choo Kok Beng in the purchase of the disputed land and that Choo Kok Beng paid the purchase price and had possession of the title deeds to the disputed land. The trial judge based his findings "entirely on the credibility or otherwise of the witnesses testifying before (him)." That was a plain misdirection and his findings of fact in favour of Choo Kok Beng were arrived at without an adequate scrutiny and consideration of all the findings before him;

(2) having regard to all the oral and documentary evidence, the trial judge was plainly wrong in deciding that Choo Kok Beng paid the purchase price and had possession of the title deeds of the disputed land and his decision ought to have been the other way.

COURT OF APPEAL.

Ross- Munro Q.C. & K.S. Lo for the 1st, 3rd and 5th defendants/appellants in C.A. No. 113 of 1980.

J.B. Jeyaretnam for the 2nd and 4th defendants/appellants in C.A. No. 1 of 1981.

L.A.J. Smith for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): These appeals arose out of a dispute involving four brothers over the beneficial ownership of ten semi-detached dwelling houses known as Nos. 1, 3, 5, 7, 9, 11, 15, 17, 19 and 21 Jalan Jermin, Singapore. These ten houses were built and completed in 1967 on five pieces of vacant land known as Lots 184-204, 184-205, 184-206, 184-207 Mukim XXIV (hereinafter referred to as "the disputed land"). The four brothers in order of seniority are Choo Kok Eng, Choo Kok Leong, Choo Kok Hoe and Choo Kok Beng. Choo Kok Eng has two sons named Choo Eng Hai and Henry Cheng Chew Choo who are also involved in this dispute.

Choo Kok Beng, the youngest of the four brothers, is the plaintiff in these proceedings in which the defendants originally were Choo Kok Hoe, Choo Kok Eng, Choo Kok Leong, Choo Eng Hai, Henry Cheng Chew Choo and Lee & Lee (sued as a firm) who were named as 1st, 2nd, 3rd, 4th, 5th and 6th defendants respectively. Before the action came to trial the action against the 6th defendant, Lee & Lee, was withdrawn and

the 3rd defendant Choo Kok Leong had died. In his place Choo Cheng Chew and Choo Kok Hoe as the administrators of the estate of Choo Kok Leong deceased were substituted.

The disputed land was purchased at an auction held in February 1954. Choo Kok Hoe (the first appellant in Civil Appeal No. 113 of 1980) attended this auction at which he was the successful bidder for the disputed land and two other pieces of vacant land known as Lot 184-215 and Lot 184-216 of Mukim XXIV. His successful bid was S$17,792.00. At the auction he paid, using a cheque on his personal bank account, the deposit of 25% of the purchase price and in March 1954 he paid the balance of the purchase price, again using a cheque on his bank account, as well as the conveyancing and other expenses.

The disputed land (Lots 184-204 to 208) was conveyed and registered in the name of Choo Kok Beng (the respondent in both appeals) but Lots 184-215 and 184-216 were conveyed in the name of Choo Kok Hoe who subsequently sold them at a profit. Sometime after its purchase the disputed land was let as vacant land at a rent of $150/- per month until the year 1964. Choo Kok Hoe received all rents paid and he paid the assessments or property tax payable in respect of the disputed land.

In July 1963 Choo Kok Hoe instructed a firm of architects to seek planning approval for the amalgamation and subdivision and the erection of one semi-detached dwelling house on each of the proposed ten subdivided lots in respect of the disputed land and planning approval was eventually granted. In May 1967 the ten semi-detached dwelling houses were completed at the total cost (excluding the cost of the land) of $203,000/- which was paid by Choo Kok Hoe and Choo Kok Leong out of monies of a building construction firm of which they were the partners.

After completion in May 1967 these ten semi-detached dwelling houses were numbered 1, 3, 5, 7, 9, 11, 15, 17, 19 and 21 Jalan Jermin, Singapore. Choo Kok Hoe took possession of Nos. 1, 3, 15 and 17 Jalan Jermin, Choo Kok Eng took possession of Nos. 9 and 11 Jalan Jermin, Choo Kok Leong took possession of Nos. 5 and 7 Jalan Jermin, Choo Kok Beng took possession of Nos. 19 and 21 Jalan Jermin.

Choo Kok Eng, the eldest of the four brothers, let No. 11 Jalan Jermin and permitted his son Choo Eng Hai (the 4th defendant in the action and the 2nd appellant in Civil Appeal No. 1 of 1981) to occupy No. 9 Jalan Jermin. Choo Kok Leong (the original 3rd defendant in this action) permitted Henry Cheng Chew Choo (the 5th defendant in this action and the 3rd appellant in Civil Appeal No. 113 of 1980) to occupy No. 7 Jalan Jermin.

In April or May 1968 Messrs. Lee & Lee (the original 6th defendant), a firm of solicitors, were given the title deeds of the disputed land by Choo Kok Hoe and were instructed to apply for the issue of separate titles under the Land Titles Act in respect of the ten subdivided Lots which are now known as Resurvey Lots 2994,2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002 and 3003 of Mukim XXIV. An application was duly made to the Registrar of Titles in November 1968 in the name of Choo Kok Beng who signed the application. In April 1969 the Registrar of Titles wrote to Messrs. Lee & Lee stating that qualified titles could be issued provided a Statutory Declaration of long possession is sworn because a title deed, being a conveyance registered in Volume 1107 No. 128, could not be produced for the Registrar's inspection as it was missing. Thereafter, differences having arisen between Choo Kok Beng and his brothers, the application for separate titles remained in abeyance and Messrs. Lee & Lee retained possession of the title deeds to the disputed land.

Although all the above-mentioned facts were never in dispute, Choo Kok Beng in December 1972 commenced the present action. He put forward two alternative claims. Primarily, he claimed that he was the beneficial as well as the legal owner of the disputed land and the houses built thereon. He alleged that Choo Kok Hoe purchased the disputed land at the auction on his behalf as his agent and that the purchase price was paid out of his own monies. He alleged that subsequently, on four occasions in June 1954, July 1956, August 1958 and September 1958 he lent Choo Kok Hoe $50,000/- on each of those four occasions free of interest and repayable on demand. He alleged that in early 1962 he sought repayment as he wanted to develop the disputed land but because Choo Kok Hoe was unable to repay him, it was orally agreed that Choo Kok Hoe would undertake to construct on the disputed land ten semi-detached houses at the cost of $187,000/- which would be set off against the debt of $200,000/-, the balance of $13,000/- to be repaid before the end of 1966.

Next, he alleged that in early 1966 he and his three brothers orally agreed that Choo Kok Hoe would exchange Choo Kok Hoe's own properties in Lincoln Road and Everton Road for four of the semi-detached houses in Jalan Jermin; that Choo Kok Eng would exchange Choo Kok Eng's property at No. 8 Norfolk Road for two of the semi-detached houses in Jalan Jermin; that Choo Kok Leong would exchange Choo Kok Leong's properties in Hindoo Road and Norris Road for two of the semi-detached houses in Jalan Jermin and lastly that they would execute all necessary transfers to effectuate the agreed exchanges when the Jalan Jermin development was completed sometime in 1968.

The next allegation was that he handed over possession, on completion of the Jalan Jermin development, of four semi-detached houses to Choo Kok Hoe and two houses each to Choo Kok Eng and Choo Kok Leong but his three brothers had failed to transfer their respective properties to him and in the premises he claimed specific performance of the 1966 oral agreement and other ancillary orders.

In the alternative Choo Kok Beng sought a declaration that he is the legal, beneficial and absolute owner of the disputed land and the houses erected thereon free from all interests whatsoever of all the defendants or any of them.

The defence put forward by his brothers and his two nephews was that the disputed land was purchased by Choo Kok Hoe for and on behalf of himself and his brother Choo Kok Leong and that with the consent of Choo Kok Beng the conveyance of the disputed land was made and registered in the name of Choo Kok Beng and that at all material times Choo Kok Hoe and Choo Kok Beng were the beneficial owners of the disputed land and the houses subsequently built thereon. The brothers of Choo Kok Beng denied entering into any oral agreements with Choo Kok Beng in respect of the disputed land and the houses erected thereon. Choo Kok Hoe and Choo Kok Leong alleged that in 1964 they decided to build ten semi-detached houses on the disputed land and pursuant thereto, after obtaining planning approval, caused to be constructed the ten semi-detached houses now numbered Nos. 1, 3, 5, 7, 9, 11, 15, 17, 19 and 21 Jalan Jermin. Prior to the completion of these ten houses Choo Kok Hoe and Choo Kok Leong agreed out of fraternal love and goodwill to make by way of gifts to their elder brother Choo Kok Eng two of the semi-detached houses, and two to Choo Kok Beng and on completion of the ten houses they gave Nos. 19 and 21 Jalan Jermin to Choo Kok Beng who had chosen these two houses. Choo Kok Hoe and Choo Kok Beng counterclaimed for a declaration that they are the beneficial owners of the disputed land and the houses erected thereon and ancillary orders thereon.

Before the action came to trial the claim against Messrs. Lee & Lee, which was for the return of the title deeds and damages for wrongful detention, was discontinued and Choo Kok Leong had died. The action was tried by Rajah, J. who on December 5, 1980, as appears from his Grounds of Judgment dated February 23, 1981, decided as follows:—

"The claim and counterclaim herein were dismissed and the orders made were settled by me on December 5, 1980 in the presence of counsel for the parties herein and read:—

'This Court Doth Further Declare that the 1st and 3rd Defendants are entitled to an equitable interest in the said land and premises known as Nos. 1, 3, 5, 7, 9, 11, 15, 17, and 21 Jalan Jermin, Singapore arising by virtue of the expenditure of moneys by them on the development of the said land and premises and subsequently on improvements of a capital nature together with interest thereon.

And This Court Doth Order (1) that the said land and premises do stand charged with the repayment to the 1st and 3rd defendants of all moneys expended by them as aforesaid in respect of the said land and premises. (2) that this action be remitted to the Registrar for an enquiry as to the amount of money expended by the 1st and 3rd Defendants as aforesaid and for an account of all income and expenditure arising from and in respect of all the said land and premises. And as to the proper rate or rates of interests prevailing during the period since the original expenditure up to the present date. (3) that the capital amount of the charge aforesaid shall be the amount found due upon the said enquiry and account.

And This Court Doth reserve judgment on the question of interest payable by the plaintiff to the 1st and 3rd defendants as aforesaid. And this Court Doth make no order as to costs and Doth Order that all parties be at liberty to apply herein'."

In his Grounds of Judgment, Rajah J. said that it "was a case which depended entirely on the credibility or otherwise of the witnesses testifying before (him)." He said that at some stage or other both Choo Kok Beng (the plaintiff) and "the 1st and 3rd Defendants" were giving "fanciful and incredible accounts of what had happened". He made the following findings of fact on the evidence before him:—

"1. That the title deeds of the Jalan Jermin properties, the subject matter of the litigation, was in the possession of the Plaintiff and that he handed them to the 1st Defendant for purposes of splitting the title.

2. That the 1st Defendant acted on behalf of the Plaintiff in the purchase of the said Jalan Jermin properties.

3. That the Plaintiff did not lend to 1st Defendant the $200,000/- as alleged by him or any portion thereof; (a) That there was no request for repayment as alleged in paragraph 3 of the Statement of Claim.

4. That the said Jalan Jermin properties were developed by and paid for by the partnership in which the 1st and 3rd Defendants were equal partners.

5. That this development took place with the knowledge and consent of the Plaintiff.

6. That there was no such agreement as alleged in paragraphs 4 and 6 of the Statement of Claim between the Plaintiff and the 1st, 2nd and 3rd Defendants.

7. There was no such further agreement as alleged in paragraph 6 of the Statement of Claim between the Plaintiff and the 1st, 2nd and 3rd Defendants.

8. There was no such agreement as alleged in paragraph 4 of the Defence of the 1st, 3rd and 5th Defendants between the Plaintiff and the 1st and 3rd Defendants."

The defendants appealed and at the conclusion of the hearing we allowed the appeals and made the following orders:–

"THIS COURT DOTH ORDER that the said appeals be allowed and that the said Judgment of the Honourable Mr. Justice A. P. Rajah dated the 5th day of December 1980 in so far as it decides for the said Plaintiff that (1) the 1st Defendant had acted on behalf of the Plaintiff in the purchase of the land at Jalan Jermin and marked on the Government Resurvey Map as Lots 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002 and 3003 of Mukim XXIV and that the Plaintiff has paid the purchase price therefor out of his own funds (2) the title deeds to the said land at Jalan Jermin had been in the possession of the Plaintiff and that he had handed them to the 1st Defendant for the purpose of applying for separate certificates of Title for each of the said lots on the said land (3) the 1st and 3rd Defendants are entitled to no greater interest in the said land and the premises erected thereon and known as Nos.1, 3, 5, 7, 9, 11, 15, 17, 19, and 21 Jalan Jermin, Singapore, than the equitable interest mentioned in the said judgment (4) there be no Order on costs, be set aside.

AND IT IS HEREBY ORDERED AND DECLARED that the 1st and 3rd Defendants are the beneficial owners of the land now known as Lots 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002 and 3003 of Mukim XXIV in the District of Kallang being part of land comprised in Grants 80, 162, 193 and Grant in fee simple No. 527 or some or one of them together with the houses erected thereon and known as Nos. 1, 3, 5, 7, 9, 11, 15, 17, 19, and 21 Jalan Jermin, Singapore.

AND IT IS FURTHER ORDERED that the Title Deeds of and relating to the aforesaid land and houses, lodged in the High Court pending the hearing of this action and now in the custody of the Registrar of the High Court be forthwith released to the 1st and 3rd Defendants.

AND IT IS FURTHER ORDERED that the Plaintiff do forthwith all things necessary to vest the legal title in the aforesaid land and houses on the 1st and 3rd Defendants.

AND IT IS FURTHER ORDERED BY CONSENT of the 1st and 3rd Defendants that upon the aforesaid land and houses being registered in their names under the provisions of the Land Titles Act and upon separate Certificates of Title being issued in respect of each sub-divided lot of the aforesaid land and the said houses erected thereon and upon the Plaintiff agreeing to and paying 20% of all costs, expenses and disbursements incurred thereby including the transfers hereinafter mentioned, the 1st and 3rd Defendants shall effect valid transfers of the aforesaid Lots 2994 and 2995 of Mukim XXIV together with the houses erected thereon known as Nos. 21 and 19 Jalan Jermin, Singapore respectively in favour of the Plaintiff.

AND IT IS FURTHER ORDERED BY CONSENT that the 1st and 3rd Defendants shall at the same time effect valid transfers of

(i) the aforesaid Lots 2998 and 2999 of Mukim XXIV together with the houses erected thereon known as Nos. 11 and 9, Jalan Jermin, Singapore in favour of the 2nd and 4th Defendants respectively upon the 2nd and 4th Defendants agreeing to and paying for the costs expenses and disbursements therefor.

(ii) the aforesaid Lots 3003, 3002, 2997, 2996 of Mukim XXIV together with the houses erected thereon known as 1, 3, 15, 17 Jalan Jermin, Singapore respectively in favour of the 1st Defendant, upon the 1st Defendant paying for the costs expenses and disbursements therefor.

(iii) the aforesaid Lots 3001 and 3000 of Mukim XXIV together with the houses erected thereon known as 5 and 7, Jalan Jermin, Singapore respectively in favour of the 3rd Defendant upon the 3rd Defendant paying the costs expenses and disbursements therefor.

AND IT IS FURTHER ORDERED that there be liberty to all parties to apply.

AND IT IS ALSO ORDERED that the Plaintiff do pay to the 1st, 3rd and 5th Defendants in Civil Appeal No.113 of 1980 and to the 2nd and 4th Defendants in Civil Appeal No. 1 of 1981, their costs incurred by the appeals and their costs of the action in the Court below, such costs to be taxed forthwith."

We now give our reasons. Choo Kok Beng (the plaintiff/respondent) is a retired civil servant and the youngest of the four brothers. He joined the civil service in 1936 as a clerk in the Postal Department. He remained in that department until he retired in August 1969 after 33 years service when he was the Superintendent at the General Post Office with a pension of $507.50 per month which is equivalent to two-thirds of his last drawn salary. According to him during the first two years of the Japanese occupation of Singapore (1942 to September 1945) he was doing business on his own but he resumed work in the Postal Department during the final two years of the Japanese occupa-

tion and at the same time also did business. After the British re-occupation he ceased doing any business. His salary in 1945 after the Japanese surrender was $250 a month. He said that during the Japanese occupation he made a profit (presumably from his business activities) of $350,000/- in Straits Settlements currency and when the Japanese surrendered he had $350,000/- in Straits Settlements currency in cash which was never kept in a bank. At that time he and his own family were staying with Choo Kok Hoe (the first defendant) in Choo Kok Hoe's house at No.15 Norris Road where he continued to stay until 1955 when he moved into government quarters.

In 1946 his wife died and a year later he married his late wife's younger sister who was then 18 years old. She gave evidence that she had $50,000 Straits Settlements currency in cash at the time of her marriage which was a gift to her by her father, who had six children, before his death in 1943 or 1944, the father being a poultry and pig farmer who had made a lot of money during the Japanese occupation of Singapore. She said that she and her husband's cash amounting to over $350,000 mostly in $50 notes were kept in the bedroom on the first floor of No.15 Norris Road. It was hidden below a floor board of the bedroom. Both she and her husband said that in 1954 her husband lent Choo Kok Hoe $50,000 in cash. The money was handed over by her husband in her presence at No. 15 Norris Road and their three children, the eldest of whom was then 5 years old, could have been present also.

The husband's evidence was that the eldest son was present and that although he did not get a written acknowledgement of the loan from Choo Kok Hoe, he made an entry immediately after the loan in a note-book with a pencil which was attached to the note-book. He also made similar entries immediately after each of the other three loans of $50,000 each to Choo Kok Hoe which he said he made in 1956, 1958 and 1959. The note-book was produced in evidence at the trial.

Also, in the note-book was a pencilled entry to the effect that he purchased the disputed land on February 23, 1954 for $13,184.32 and paid on that day $3,396.08 being 25% of the purchase price and paid $9,888.24 being the balance of 75% on March 25, 1954 using $6,000/- of his wife's money in his safe keeping and which he returned "about a month later." In his evidence he said he used Choo Kok Hoe as his agent to purchase the disputed land at the auction and that he gave Choo Kok Hoe cash to pay the 25% deposit and the 75% balance of the purchase price and that the cash came from the profits he made during the Japanese occupation.

It is plain from the entry in respect of this alleged purchase that it was not a contemporaneous entry as it must have been made after March 23, 1954 and it is to be observed that it did not record that the purchase was through Choo Kok Hoe as his agent to whom he had given cash to pay on his behalf the purchase price.

In contrast there was the indisputable evidence of the two cheques issued by Choo Kok Hoe in payment of the purchase price of the disputed land. There was the undisputed fact that Choo Kok Hoe let the disputed land and received the rents over a period of many years and paid the assessments or property tax. There was the undisputed evidence of an independent and disinterested witness from the firm of architects that Choo Kok Hoe gave the instructions to apply for subdivision and planning approval to develop the disputed land. There was the evidence of another independent and disinterested witness, a practising solicitor, that Choo Kok Hoe gave her the title deeds to the disputed land to apply for the issue of separate titles. There were other circumstances which were relevant and material in deciding whether or not Choo Kok Beng purchased and paid the purchase price of the disputed land and had possession of the title deeds.

In his judgment the trial judge gave no reasons why he found that Choo Kok Hoe acted on behalf of Choo Kok Beng in the purchase of the disputed land and that Choo Kok Beng paid the purchase price and had possession of the title deeds to the disputed land. The trial judge based his findings "entirely on the credibility or otherwise of the witnesses testifying before (him)." In our judgment that was plain misdirection and his findings of fact in favour of Choo Kok Beng were arrived at without an adequate scrutiny and consideration of all the evidence before him.

At the conclusion of the appeals we were satisfied, having regard to all the oral and documentary evidence, that the trial judge was plainly wrong in deciding that Choo Kok Beng paid the purchase price and had possession of the title deeds of the disputed land and that his decision ought to have

been the other way. For these reasons we allowed the appeals.

Appeals allowed.

Solicitors: *Allen & Gledhill; J.B. Jeyaretnam & Co.; L.A. J. Smith.*

M.V. "JAG SHAKTI", OWNERS & ORS. INTERESTED v. CHABBRA CORPORATION PTE. LTD.

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.) August 19, 1982]
[Singapore – Civil Appeal No. 32 or 1981]

Shipping Law – Carriage of goods by sea – Wrongful delivery – Carriers sued – Damages.

Shipping Law – Bills of lading – Delivery to party without production of original bills of lading – Wrongful delivery.

This was an appeal against a judgment of the High Cout under which the respondents recovered S$389,117.62 (US$110,000.00), interest thereon and costs. The said sum was fixed by the learned trial judge on the arrived market value of the goods. He, however, based the arrived market value of the goods on the amount of the indemnity given by the receivers of the goods at destination to the appellants' agent without production of the original bills of lading.

The respondents had sued in contract as indorsees of two bills of lading. The appellant as carriers had delivered the goods, 5,000 metric tons of edible salt to Mumtazuddin & Sons at Chittagong against their indemnity, which was countersigned by the Rupali Bank of Bangladesh without the production of the original bills of lading duly endorsed. The respondents had claimed US$220,000.00 as the value of the goods on the basis that they had bought the goods from the I.O.C. at US$110,000.00 and had sub-sold the same to Mumtazuddin for US$220,000.00. The learned trial judge based the value of the goods on the Calcutta suppliers' invoices of the goods totalling US$10,000.00 as the amount of the damages which the respondents had suffered. He did not say anything about the alleged sub-sale of the goods by the respondents to Mumtazuddin.

By a respondents' notice, the respondents sought an increase of the value of the goods from US$110,000.00 to US$220,000.00 on the basis that there was a sub-sale.

Held: (1) the respondents, as indorsees for value and holders of the bills of lading were party to the two contracts of carriage with the appellants as the carriers as contemplated by the operation of the Bills of Lading Act, 1855. The respondents were therefore entitled to sue the carriers in contract;

(2) in the circumstances, the respondents were not entitled to recover on the basis of the arrived market value of the goods. They were entitled to recover as they had incurred under the two letters of credit. They were accordingly entitled to recover the sum of $275,620.82;

(3) Mumtazuddin & Sons, not having paid for the goods were not entitled to the possession of the Bills of Lading and therefore were not entitled to the delivery which was wrongful.

Cases referred to:–

(1) *Sewell* v. *Burdick* (1884) 10 A.C. 74.
(2) *London Joint Stock Bank (Ltd.)* v. *British Amsterdam Maritime Agency Ltd.* [1910] 16 Com. Cas. 102.

COURT OF APPEAL.

Denis Murphy for the appellants.
C. Arul for the respondents.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): This is an appeal against a judgment of the High Court under which the Respondents recovered the sum of $389,117.62 (equivalent to US$110,000.00), interest thereon and costs. The sum of $389,117.62 was fixed by the learned trial judge on the arrived market value of the goods. He, however, based the arrived market value of the goods on the amount of the indemnity given by the receivers of the goods at destination to the Appellants' agent without production of the original bills of lading.

The Respondents had sued in contract as indorsees of two bills of lading to whom the property in 5,000 metric tons of edible salt ("the goods") had passed or, alternatively, in tort, for conversion of the same.

The Appellants as carriers had delivered the goods to Mumtazuddin & Sons ("Mumtazuddin") at Chittagong, Bangladesh against their indemnity, which was countersigned by the Rupali Bank of Bangladesh, without the production of the original bills of lading duly endorsed. The Respondents had claimed US$220,000/- as the value of the goods on the basis that they had bought the goods from Indian Overseas Corporation ("IOC") of Calcutta, India at US$110,000/- C&F Chittagong and had sub-sold the same to Mumtazuddin for US$220,000/-. The learned trial Judge based the value of the goods on the Calcutta suppliers' invoices of the goods totalling US$110,000/- as the amount of the damages which the Respondents had suffered. He did not say anything about the alleged sub-sale of the goods by the Respondents to Mumtazuddin.